IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 7189 of 2005(E)

PETITIONER:

V.K.MATHA,
PART TIME SWEEPER(RETIRED),
VARIKANDY HOUSE, KALLODE, PERAMBRA P.O.,
KOZHIKODE DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

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1. STATE OF KERALA, REP. BY SECRETARY TO GOVERNMENT, DEPARTMENT OF HEALTH & FAMILY WELFARE, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF HEALTH SERVICE, THIRUVANANTHAPURAM.

3. THE DISTRICT MEDICAL OFFICER, KOZHIKODE.

BY GOVERNMENT PLEADER SRI.P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF GO(P)3000/98 DTD.25.11.1998.

EXT.P2 TRUE COPY OF SWEEPING AREA CERTIFICATE DTD. 23.10.1996.

EXT.P3 TRUE COPY OF LETTER DTD.28.1.2002 ISSUED BY THE 2ND RESPONDENT TO THE PETITIOENR.

EXT.P4 TRUE COPY OF THE PENSION PAYMENT ORDER ISSUED TO THE PETITIONER.

EXT.P5 TRUE COPY OF THE SERVICE PARTICULARS OF THE PETR.

EXT.P6 TRUE COPY OF REPN.DTD.5.12.2000 SUBMITTED BY THE PETR. BEFORE THE THIRD RESPONDENT.

TRUE COPY

P.A.TO JUDGE

CSS/

K.BALAKRISHNAN NAIR,J

W.P.(C)NO.7189 of 2005

Dated this the 20th day of July, 2007

JUDGMENT

The petitioner is a regular part-time sweeper attached to the Primary Health Centre, Koothali under the third respondent. She retired from service on 30.6.2001 on attaining the age of 70 years. Her main grievance is that the pay and allowances payable to her in terms of Ext.P1 G.O. dated 25.11.1998 were not released to her. Ext.P2 is the certificate showing the sweeping area of her office which was more than 400 sq. metres. So, as per Ext.P1 she was entitled to get a monthly pay of Rs.1500 plus dearness allowance with effect from 1.3.1997. Her claim was finally considered and rejected by the Director of Health Services by Ext.P3 communication dated 28.1.2002 stating that the area of the compound of the Primary Health Centre is below 400 sq. metres. This writ petition is filed challenging Ext.P3.

2. There is some delay in challenging the same but the petitioner explained the said delay in the writ petition. One of the grounds is her financial difficulties. I think the claim of a part-time sweeper should not be thrown out on the technical ground of delay. Nobody except the

petitioner is prejudiced by the delay in approaching this Court. The petitioner points out that the Director of Health Services passed the impugned order based on the new norms which came into force on 25.11.1998. The finding in Ext.P3 is unsustainable in view of Ext.P2 certificate. So she seeks to quash Ext.P3 and prays for a direction to the competent authority to reconsider her claim afresh, in accordance with law.

3. The respondents have filed a statement. In the said counter affidavit it is stated that Ext.P2 certificate issued by the Assistant Executive Engineer on 23.10.1996 shows the area as 420 sq.metres including the yard around the building. According to the respondents, the part-time sweepers need not sweep the yard. If that area of the yard excluded, the total sweeping area is below 400 sq.metres. The petitioner has not filed any reply affidavit, but the learned counsel for the petitioner submits that the counter affidavit is filed based on the guidelines for determination of sweeping area which came into force with the issuance of the G.O. dated 25.11.2005. Going by Ext.P3, the petitioner's claim is rejected on the ground that the compound of the Koothali Primary Centre is below 400 sq. metres. So the entire compound was reckoned for the purpose of computing the sweeping area. But it was found that the total area is below 400. As per the then

norms in force the entire area swept by the sweeper was reckoned also. From Ext.P3 it is not clear what is the basis for arriving at a conclusion that the area is only 400 sq.metres in the face of Ext.P2 certificate of the Assistant Executive Engineer of the PWD that the sweeping area is 420 sq.metres. So Ext.P3 was passed without taking note of Ext.P2. Accordingly, Ext.P3 is quashed. The second respondent is directed to consider and pass fresh orders on Ext. P6 on the claim of the petitioner taking into account Ext.P2 and also in the light of relevant norms which prevailed between 1996 and 2001. This, the second respondent shall do within three months from the date of production of a copy of this judgment. While taking the decision, the 2nd respondent shall not be guided by the new norms contained in the G.O. dated 25.11.2005.

Writ petition is disposed of as above.

K.BALAKRISHNAN NAIR,
JUDGE

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